

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
FREDERICK J. AND MONA S. LONERGAN	:	DETERMINATION
	:	DTA NO. 814247
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Years 1977	:	
through 1985.	:	

Petitioners, Frederick J. and Mona S. Lonergan, 609 Washington Court, Guilderland, New York 12084, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1977 through 1985.

The Division of Taxation, represented by Steven U. Teitelbaum, Esq. (Herbert M. Friedman, Jr., Esq., of counsel), filed a motion for summary determination, dated December 21, 1995, in the above-captioned case. Petitioners, represented by Segel, Goldman & Mazzotta, P.C. (Robert J. Koshgarian, Esq., of counsel), were granted an extension for filing their response until February 13, 1996. Petitioners filed their response on February 13, 1996. Based on the affidavits of Herbert M. Friedman, Jr., Charles Bellamy and Robert J. Koshgarian, and documents attached thereto, Marilyn Mann Faulkner, Administrative Law Judge, renders the following determination.

ISSUE

I. Whether the Division of Taxation may assert the limitations period of Tax Law § 687(a) to bar petitioners' refund claim for taxes paid on Federal pension income.

II. Whether the special refund authority of Tax Law § 697(d) applies.

FINDINGS OF FACT

1. On April 14, 1989, petitioners filed a claim for refund for the tax years 1982 through 1988. The Division of Taxation ("Division") paid refunds to petitioners for the years 1985 through 1988 by check dated September 9, 1994. However, the Division issued a refund denial

letter, dated July 25, 1994, for the years 1982 through 1984 on the ground that the three-year limitations period in Tax Law § 687 had expired.

2. After a conciliation conference, the conferee issued a conciliation order, dated July 21, 1995, sustaining the refund denial.

3. Petitioners filed a petition, dated August 17, 1995, alleging that they are seeking refunds for the years 1977 through 1985 in the sum of \$11,512.00 for taxes they paid on petitioner Frederick Lonergan's Federal pension. Petitioners argued that the Supreme Court decision in Davis v. Michigan (489 US 803 [1989]) exempted Federal pensions from state tax in those states that did not impose an income tax on state retirement benefits and that the rule in Davis was to be applied retroactively.

4. The Division filed an answer, dated November 8, 1995, alleging that "Governor Cuomo's 1994 decision to approve refund claims for those who paid New York State income tax on their federal pension income was solely limited to those who had timely refund claims under the Tax Law" and that petitioners failed to file a claim for refund within the three-year period required under section 687 of the Tax Law.

5. On December 21, 1995, the Division filed a motion for summary determination pursuant to 20 NYCRR 3000.9(b)(1). The Division argued that petitioners failed to file any refund claim for the years 1977 through 1981 and failed to file a refund claim for the years 1982 through 1984 within the three-year limitations period of section 687 of the Tax Law. The Division also noted that it paid petitioners their refund claim for the year 1985. The Division concluded that, as a matter of law, New York State law provided petitioners with an adequate predeprivation or postdeprivation remedy consistent with the guidelines enunciated by the United States Supreme Court in Reich v. Collins (513 US __, 130 L Ed 2d 454 [1994]).

6. In their responding papers, petitioners do not contest the Division's allegation that it refunded the amount claimed for the year 1985. Petitioners alleged that the Division has not provided meaningful backward-looking relief to them in order to rectify New York State's unconstitutional taxation of the Federal pension, as required in the U.S. Supreme Court's

decision in Harper v. Virginia Department of Taxation (509 US ___, 125 L Ed 2d 74 [1993]) and subsequently in Reich v. Collins (*supra*). Petitioners contended that the Division's application of the short limitations period of section 687 is inconsistent with these Supreme Court decisions regarding the discriminatory nature of New York's prior tax scheme. Petitioners claimed that Tax Law § 697(d), which allows the Division to refund personal income taxes at any time without regard to any period of limitations, is applicable in this matter.

CONCLUSIONS OF LAW

A. In Davis v. Michigan Dept. of Treasury (489 US 803, 103 L Ed 2d 89 [1989]), the U.S. Supreme Court held that a tax scheme that exempts from tax retirement benefits paid by the state but not retirement benefits paid by the Federal Government violates the constitutional intergovernmental tax immunity doctrine. In Harper v. Virginia Dept. of Taxation (509 US ___, 125 L Ed 2d 74 [1993]), the Supreme Court further held that the ruling in Davis applies retroactively and that states which violated the tax immunity doctrine must provide a "meaningful backward-looking relief to rectify any unconstitutional deprivation" (*id.*, 125 L Ed 2d at 89, *quoting*, McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, 496 US 18, 31, 110 L Ed 2d 17 [1990]). A State may provide such relief by awarding refunds to those illegally taxed or provide some other relief that "create[s] in hindsight a nondiscriminatory scheme" (McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, *supra* 496 US at 40). The U.S. Supreme Court found that the State of Georgia had not provided a taxpayer "meaningful backward-looking relief" when it construed a refund statute not to apply to the taxpayer on the ground that the law under which taxes were assessed and collected was subsequently declared unconstitutional (Reich v. Collins, 513 US ___, 130 L Ed 2d 454 [1994]).

B. Petitioners argue that the refund provision of section 687 of the New York State Tax Law does not provide them with "meaningful backward-looking relief" to the extent that such relief is limited by the three-year limitations period, and that instead, section 697 should be applied to permit refunds for the years prior to 1985. Tax Law § 687(a) provides that a taxpayer may file for a refund of taxes within three years from the time the return was filed or two years

from the time the tax was paid, whichever of such periods expires the later. Under the special refund authority of section 697(d), the Division has the power to refund monies illegally or erroneously paid by a taxpayer under a mistake of facts.

C. Contrary to petitioners' claims, the limitations period of section 687 does not deprive them of meaningful backward-looking relief. In McKesson and Harper, the U.S. Supreme Court noted that any predeprivation remedy or postdeprivation remedy, such as a refund statute, must satisfy the minimum due process requirements outlined in its previous decisions. The Court further elaborated, in its discussion of postdeprivation remedies, that the State is free to impose various procedural requirements for postdeprivation relief including the enforcement of a statute of limitations (McKesson v. Division of Alcoholic Beverages & Tobacco, *supra* 496 US at 45). The Court indicated that the purpose of such procedural protections was "to secure the State's interest in stable fiscal planning when weighted against its constitutional obligation to provide relief for an unlawful tax" (*id.*, *citing*, Ward v. Love County Board of Comm'rs, 253 US at 25, 64 L Ed 2d 751, 40 S Ct 419). Thus, the three-year limitations period does not nullify this refund provision as a meaningful backward-looking remedy.

D. Furthermore, the special refund authority of section 697(d) does not apply to petitioners' situation. The Tax Appeals Tribunal has addressed the special refund authority under Tax Law § 697(d) in Matter of The Estate of Mackay (Tax Appeals Tribunal, March 23, 1989). In that case, Mr. Mackay received record royalties for the years 1951 through 1979 pursuant to an agreement with Helen D. Miller, the widow of Glenn Miller. Subsequent to Helen Miller's death, a court action was brought against Mr. Mackay for return of all royalties paid. In accordance with a final decision by the New Jersey State Court, the estate of Mr. Mackay paid to the estate of Helen Miller certain sums of money based on the Court's interpretation of the royalty contract at issue. The estate of Mackay thereafter sought a refund of an overpayment of income tax based on the royalties and commissions the Mackay estate was ordered to repay to the Miller estate. The Tax Appeals Tribunal held that the refund could not be made pursuant to section 697(d) because the Mackay estate's entitlement to retain the income

from the commissions and royalties was a question of law resolved by the New Jersey Court and that payments made due to the wrong construction of the terms of a contract was a mistake of law and not a mistake of fact. In reaching this decision, the Tribunal set forth the following legal standard:

"A mistake of fact has been defined as an understanding of the facts in a manner different than they actually are (54 Am Jur 2d Mistake, Accident or Surprise § 4; Wendell Foundation v. Moredall Realty Corp., 176 Misc. 1006, 1009). A mistake of law, on the other hand, has been defined as acquaintance with the existence or nonexistence of facts, but ignorance of the legal consequences following from the facts (54 Am Jur 2d Mistake, Accident or Surprise § 8; Wendell Foundation v. Moredall Realty Corp., supra, at 1009)."

Petitioners' payment of the income tax for which they seek refund was based on an interpretation of the law that was subsequently declared unconstitutional. Thus, petitioners' failure to timely file refund claims under section 687(a) for the years prior to 1985 was based on a mistake of law and not on the existence or nonexistence of the underlying material facts (see, Mercury Machine Importing Corp. v. City of New York, 3 NY2d 418, 165 NYS2d 517; Matter of Fiduciary Trust Co. of N.Y. v. State Tax Commn., 120 AD2d 848, 502 NYS2d 119).

Therefore, the special refund authority of section 697(d) is not applicable.

E. Based on the conclusions of law above, and inasmuch as there are no triable issues of fact, summary determination should be granted in favor of the Division pursuant to 20 NYCRR 3000.9(b).

F. The Division of Taxation's motion for summary determination is granted, and the petition of Frederick J. and Mona S. Lonergan is denied.

DATED: Troy, New York
May 2, 1996

/s/ Marilyn Mann Faulkner
ADMINISTRATIVE LAW JUDGE